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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fifteenth session

SUMMARY RECORD OF THE 32nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 20 November 1996, at 3 p.m.

Chairperson: Mr. ALVAREZ VITA

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Portugal (Macau) (continued) (E/1990/6/Add.8 and E/C.12/1995/LQ.10)

1. At the invitation of the Chairperson, the Portuguese delegation took places at the Committee table.

Issues relating to the general provisions of the Covenant (arts. 1 to 5)

2. Mr. COSTA OLIVEIRA (Portugal), continuing his replies to questions from members of the Committee, said that Portuguese civil servants in posts subject to localization were generally expatriates, most of whom would be returning to Portugal and would receive compensation if they were assigned to a post at a lower level than the one they had occupied in Macau. Some would be retiring and others with a good knowledge of Macau would be invited to stay on as advisers. The private sector was for the most part run by Macau's Chinese community and its future did not give rise to any concern.

Issues relating to the specific provisions of the Covenant (arts. 6 to 15)

3. Mr. RATTRAY requested clarification as to how far the right to strike was protected in practice and what the attitude of the public and the business world was to that right. He would like to know whether there had been any cases of reprisals against strikers and whether measures taken to deal with strikes had caused concern.

4. Mr. GRISSA observed out that the dates indicated in the Portuguese Government's written replies (document with no symbol distributed by the Portuguese delegation in English) gave the day and month of the adoption of certain measures, but not the year. What, moreover, was the situation regarding the right to form trade unions if, as Portugal affirmed, collective bargaining was not customary in Chinese labour relations?

5. Mr. TEXIER, referring to articles 6 and 7 of the Covenant, asked what protection there was for workers in cases of occupational injury or illness, whether the Labour Inspectorate had the power not only to enforce the regulations but also to take preventive action by, for example, requiring that work be stopped on a site it considered dangerous, and lastly whether breaches of the labour laws were punished.

6. The terms for the dismissal of a worker - for example, in the event of restructuring - were not explained in detail in Portugal's report, which did not make it clear whether a dismissal could be negotiated and whether there were remedies available to workers claiming to have been wrongly treated.

7. Mrs. BONOAN-DANDAN said that she had noted some inconsistencies as between paragraphs 92, 93, 95, 97 and 100 of the report (E/1990/6/Add.8) concerning the implementation of article 7 of the Covenant in Macau. If, as indicated in paragraph 93, there was no statistical information regarding the distribution of income between the public and private sectors, she could not see what basis there was for the statements contained in the remainder of that paragraph and in paragraph 92, or for the figures calculated for the public sector in table 4. Likewise, it was difficult to make an appreciation of the situation of non-resident workers from the information in paragraphs 95 and 100, according to which "the law covers all categories of workers", whereas "non-resident workers are not covered by the Labour Law". Lastly, in the absence of statistics, what empirical data justified the statement in paragraph 97 that there was no discrimination against any group of workers?

8. Mr. COSTA OLIVEIRA (Portugal) recognized that while the wording of a legislative text indicated the year in which it had been adopted, the same was not true for other measures or decisions; the person drafting the written replies had, indeed, overlooked that point.

9. Replying to the questions on the right to strike, he said that the right to strike existed in law but tended not to be exercised in practice since Chinese culture preferred negotiation and settlement to open conflict. Unions and employers might be put under very strong pressure, including from public opinion, to find a solution. Strikes were very rare, more often affecting the public sector, and were initiated only in connection with very serious matters, such as non-payment of wages for several consecutive months.

10. The right to form and join trade unions did, of course, exist but the unions preferred to call themselves "workers' associations" and aimed to promote settlements rather than resort to industrial action. Collective bargaining as such was uncommon since the parties preferred to come to an understanding directly amongst themselves, without the presence of a Government representative, as required by Portuguese law. That point had admittedly not been made in the report.

11. The powers of the Labour Inspectorate and the regulations concerning dismissals were altogether satisfactory. Macau still needed non-resident workers, and even where restructuring took place, workers were generally retrained rather than dismissed. The regulations concerning dismissals were none the less interpreted very liberally in Macau: a dismissal had, of course, to be justified in theory but the employer did have the easier role.

12. Mr. LOUREIRO (Portugal) said that a dismissed worker could ask the Labour Inspectorate to take up his case. A inspector would endeavour to help the two parties reach an agreement, in compliance with the law, without going to court. When a dismissal was unfair, the parties would agree on compensation, but if the employer believed that the dismissal was fair, the matter would be decided by the competent court. In the case of an accident at work, the inspector made out a report; if the accident had not resulted in death or serious injury, the court would simply determine the amount of compensation due to the victim.

13. Mr. TEXIER, speaking on a point of order, said that the Portuguese delegation had not replied to his question concerning the preventive role of the Labour Inspectorate and any powers it might have to close a site that it considered dangerous.

14. Mr. LOUREIRO (Portugal) said that the applicable regulations were the same as those in Europe. The Inspectorate was bound to sanction any breaches it noted and if an inspector believed that lives were at risk, he would immediately report the matter to the Director of the Labour Inspectorate, who could order the closure of the site.

15. Mr. COSTA OLIVEIRA (Portugal), referring to paragraphs 92, 93 and 97 of the report, indicated that the Macau Labour Inspectorate had not registered any complaint concerning a violation of the principle of equal pay for equal work. There was, however, always the possibility that in Macau, as elsewhere, such cases might occur.

16. Mr. ADEKUOYE said that, according to the document "Country Reports on Human Rights Practices for 1994", which had been published by the United States Department of State and was quoted in the country analysis prepared for the Committee by the secretariat for the Committee (E/C.12/CA/23), many manual and other workers from China and other countries were working between 10 and 12 hours a day, often earning wages that were less than half of those paid to Macau residents for the same work. The document also indicated that, according to the official statistics for 1993, 32.7 per cent of wage earners worked seven days a week. He would welcome clarification from the Portuguese delegation on that matter.

17. Mr. COSTA OLIVEIRA (Portugal) said that he had read the document in question and that Portugal had, furthermore, entered a protest in that regard and called for some of the information in it to be corrected. As far as the authorities knew, there was no violation of the principle of equal pay for equal work in Macau. He also wished to assure Mr. Adekuoye that overtime in Macau was paid at the normal rate in accordance with the law or, in some sectors, on the basis of collective bargaining agreements.

18. With reference to paragraphs 95 and 100 of the report, on the legal protection of non-resident workers, he wished to point out that the workers concerned were authorized to stay in Macau on a temporary basis to perform specific jobs. In its written reply to question No. 12 of the list of issues, the Government indicated that non-resident workers were protected by special provisions (Governor's Orders Nos. 12/GM/88 and 49/GM/88), which guaranteed them appropriate lodging and social protection, in particular for accidents at work and occupational illness. Such protection did exist, therefore, even if it was not as good as that enjoyed by resident workers. He would provide clarification as soon as possible regarding the method used to compile the statistical data given in paragraph 93 of the report.

19. Mrs. JIMENEZ BUTRAGUEÑO said that she would like more information on the difference in social protection as between resident and non-resident workers. Did the latter have to pay social insurance contributions?

20. Mr. CEAUSU observed that the statistical information in the report was old, some of it going back to 1987, and should be brought up to date. He would furthermore like to know the frequency of labour inspections in Macau. It would appear that such inspections were carried out only when a worker or union lodged a complaint. They should, however, be performed routinely. Tables 5 and 6 showed an increase in the number of victims of occupational accidents, thus indicating that inspections were not sufficiently frequent. He noted, in particular, that some accidents were due to over-exertion. Therefore, hours worked were sometimes excessive, as maintained by the United States Department of State in the document cited by Mr. Adekuoye. He requested some clarification in that regard.

21. Mr. ADEKUOYE said that the Committee needed recent statistics and those contained in the report certainly should be updated. With regard to table 5 (number of victims of occupational accidents by age group), he would like to know how many children aged 14 to 18 years were victims of occupational accidents. The 14-24 age group would have to be split for that purpose.

22. Mrs. JIMENEZ BUTRAGUEÑO said she was concerned by the fact that the International Labour Organization (ILO) Conventions relating to article 7 of the Covenant (right to just and favourable conditions of work) might no longer be in force in Macau after 1999. She would also like to know what was meant by "workers' associations ... similar to trade unions" in paragraph 103 of the report. Were those associations real trade unions? Lastly, she was surprised by the lack of social protest in Macau and by the passivity of the general public. Was the influence of China perhaps already making itself felt?

23. Mrs. BONOAN-DANDAN said that she was familiar with Macau and knew that Macau's Chinese population was afraid about the future. It was not enough to say that the labour inspectorate had not been informed of any case of a violation of the principle of equal pay for equal work. Furthermore, she was surprised that the Department for Statistics and Census was unable to provide recent data on a population of only 400,000. How had it been possible to furnish precise data on accidents due to exposure to extreme temperatures, for example, and yet give no indication of any case of sexual harassment? She would like information on the situation of casino employees, who represented a sizeable part of the labour force in Macau. Lastly, the Committee needed more concrete information and the Government should make every effort, including by means of the collection of full statistical data, to protect the economic, social, and cultural rights of the Macau population.

24. Mr. GRISSA requested some clarification regarding paragraphs 103 and 104 of the report, which he found so confusing and contradictory as to be incomprehensible.

25. Mr. ADEKUOYE said that he would like more information about the illegal immigration of workers into Macau and the measures being taken by the Government to deal with such immigration.

26. Mr. THAPALIA asked for some clarification about working conditions and collective bargaining in the building sector.

27. Mr. COSTA OLIVEIRA said that Macau was subject to very strong migratory pressure especially from the People's Republic of China. The authorities of the territory assumed the number of illegal immigrants to be very high, despite the very strict border control policy.

28. As non-resident workers were by definition expected to stay only temporarily in the territory, they were not required to pay social insurance contributions, since they would be unable to enjoy the benefits.

29. With regard to hours worked, it was true that employees might in some cases be called upon to work seven days a week when a particular job had to be finished on time, but that was by no means the general rule.

30. Lastly, the Macau authorities had no information on cases of discrimination because they had quite simply not been notified of any situations of that kind. Acts of discrimination might occur and in such cases the authorities would, of course, be perfectly ready to take action, but to date no complaint had been made in that regard. It was difficult to imagine why the labour inspectorate, which had reported a number of violations of the labour law in other spheres, would hide cases of discrimination.

31. Mrs. BONOAN-DANDAN, speaking on a point of order, said that she had in no way meant to suggest that the Macau authorities might be concealing cases of discrimination.

32. Mr. COSTA OLIVEIRA (Portugal) said that casino employees were almost all resident workers and they were covered by the general labour laws and paid taxes like other workers. He had no information to suggest that there were particular problems of sexual harassment in the casino sector.

33. Responding to the comments made by Mr. Grissa, he recognized that paragraph 104 of the report was poorly drafted. In fact, the right to strike applied without reservation to the whole territory of Macau. There was, however, no regulation specifying the nature of the entities which could call a strike, the amount of warning required and other details applicable to the right to strike. Concerning paragraph 103 of the report, it should be made clear that any group wishing to create a trade union could do so. The point was simply that, for cultural reasons, people in Macau preferred to establish workers' associations, which were not really trade unions, although they were similar to them in the way they functioned. The law did not provide any mechanism for collective bargaining.

34. Lastly, his delegation would provide all the statistics available to it, although in some cases they were not organized according to the same criteria as those used in the reporting guidelines.

35. Mr. GRISSA asked whether the fact that collective bargaining was not provided for by law meant that it was illegal.

36. Mr. COSTA OLIVEIRA (Portugal) said that collective bargaining in no way constituted an offence. The fact was simply that agreements concluded between a workers' association and an employers' association after collective bargaining were not notified to the Government and were not registered by it.

37. Mrs. JIMENEZ BUTRAGUEÑO asked whether the workers' associations were affiliated to international trade union federations.

38. Mr. COSTA OLIVEIRA (Portugal) replied that he did not have information covering all workers' associations but he knew that the civil servants' association, for example, was affiliated to a major international federation.

39. Mr. LOUREIRO (Portugal) said that the information contained in Portugal's report concerning the ILO conventions accepted by the Territory was incomplete and that Conventions Nos. 1, 12, 26, 29, 73, 81, 88, 98, 100, 105, 106, 107, and 111 were all applied in Macau.

40. Mr. COSTA OLIVEIRA (Portugal) said that the Portuguese authorities were discussing further with the Chinese authorities the question of the continued application of the international instruments in force in Macau. In that regard, it should be pointed out that under a specific provision of the Basic Law of the Macau Special Administrative Region of the People's Republic of China, the ILO conventions and the two International Covenants on Human Rights would remain in force after the transfer of sovereignty. Discussions would, however, be pursued on the conditions under which those instruments would continue to be applicable.

41. Regarding the comment that Macau society seemed more passive than Hong Kong society, he recognized that the Chinese influence on Macau was very considerable, but wished to point out that the People's Republic of China had always respected the principle that Portugal was responsible for the administration of the Territory. Macau society might well be less active and less militant than Hong Kong society, but that could be explained by the fact that a large part of the population in Hong Kong had been living there for two or three generations and had a keen sense of belonging which had no equivalent in a very large part of the Macau population. One should, however, be very wary about drawing conclusions that might justify a loss of autonomy for Macau.

42. The CHAIRPERSON invited the members of the Committee to examine the issues relating to the implementation of article 9 of the Covenant.

43. Mrs. JIMENEZ BUTRAGUEÑO, turning to the question of old-age pensions, asked whether there were any statistics on the number of older persons within the Macau population. It seemed to her, furthermore, that there was some discrimination in relation to old-age pensions between civil servants and private sector workers and she would be grateful for clarification in that regard. She would also like to know whether people not meeting the conditions stated in paragraph 130 of the report received an old-age pension and, if so, on what terms. It would likewise be interesting to know how the old-age pension compared with the minimum wage and whether retired persons were entitled to health care.

44. Mr. GRISSA said that in the case of Macau, as in that of Hong Kong, he was concerned about what would happen after the transfer of sovereignty to the People's Republic of China. He would therefore like to know whether any provision of the agreement concluded with China provided for old-age pensions and the savings of retired persons to be maintained. In addition, it was hard

to imagine that the Chinese authorities would allow Macau's casinos to remain open and he was therefore concerned about the future of the many people working in that sector.

45. Mr. ADEKUOYE requested clarification regarding paragraph 110 of the report, which stated that of the 15,700 civil servants in the Territory, 8,000 were active subscribers to the Macau Pensions Fund and 3,091 others were non-active subscribers. Who were the other 4,500 civil servants and were they entitled to a retirement pension? Furthermore, it would be interesting to know how the civil servants' retirement pension compared with the cost of living and with the salary earned during active life. Lastly, were the retirement pensions raised as salaries increased?

46. Mrs. BONOAN-DANDAN, referring to paragraph 140 of the report, asked whether non-resident workers were entitled, like resident workers, to maternity leave with paid salary up to a maximum of three births.

47. Mr. CEAUSU observed, also with reference to paragraph 140, that non-resident workers did not have the same social protection entitlements as resident workers. He would welcome clarification on that point. Concerning accidents at work (para. 136 of the report), he was surprised that in 1993 the Social Security Fund (SSF) had paid an amount of MOP 200,000 to one worker.

48. Mr. ADEKUOYE asked whether non-resident workers received a lump sum at the end of their contract before returning to their country of origin.

49. Mr. COSTA OLIVEIRA (Portugal) said that no such clause was included in the employment contracts of non-resident workers.

50. Mr. ALEIXO (Portugal) said that while it was not necessary to have subscribed to the SSF to obtain the social pension (MOP 600 per month), beneficiaries must be over 65 and must have resided in Macau for at least seven years. In 1996, 5,570 people were receiving that pension (see para. 129).

51. To be entitled to an old-age pension (MOP 1,000 per month), it was necessary not only to be over 65 years of age and to have been resident for more than seven years in the Territory, but also to have subscribed to the SSF for at least 60 months. In 1996, there were 2,395 beneficiaries, as against 1,821 in 1995 (see para. 130). Civil servants, whose pensions were much the same as those of workers in the private sector and were raised at the same time as salaries, must have worked in the public service for at least 15 years to be entitled to a pension.

52. The financial situation of the SSF was currently good but likely to be somewhat less so in the future because of the expected increase in the number of beneficiaries.

53. The payment of MOP 200,000 by the SSF in 1993 to a victim of an accident at work had been made in accordance with the law requiring the SSF to pay compensation instead of the employer when the latter did not have the financial means to discharge his obligations in respect of his employees, for example, in cases of bankruptcy (para. 135).

54. Lastly, health-care services were free for older persons in Macau.

55. Mr. COSTA OLIVEIRA (Portugal) said that all women working in Macau, whether resident or non-resident, were entitled to maternity leave with paid salary up to a maximum of three births.

56. The savings, pensions and social entitlements of persons residing in Macau, including civil servants, would be maintained after the transition period, in accordance with the Sino-Portuguese Joint Declaration. The Declaration also contained special provisions for the maintenance of casinos after the retrocession in view of their importance to the Territory's economy.

57. Mr. CEAUSU expressed surprise that employers had to pay contributions of MOP 30 per month for each non-resident worker (para. 137 (b)) when, according to paragraph 140, such workers were excluded from the social security system.

58. Mrs. BONOAN-DANDAN said that depriving salaried workers of paid maternity leave after the third child was in her view contrary to article 10, paragraph 2, of the Covenant.

59. Mrs. JIMENEZ BUTRAGUEÑO associated herself with the concerns expressed by the two previous speakers and asked whether a worker could be sure of returning to her job after taking leave to give birth to a fourth child.

60. Mr. COSTA OLIVEIRA (Portugal) said that the law required employers to pay the SSF a contribution of MOP 30 per month for each non-resident worker but only MOP 20 per month for each resident worker in order to encourage them to recruit resident workers.

61. It should be pointed out that while women were not entitled to paid maternity leave as from the fourth child, they were free to choose the number of children they wanted and could be sure of resuming their employment after taking leave for childbirth, the costs of which were borne by the social security system. Those entitlements would be maintained after the transition period.

62. Although non-resident workers were in effect excluded from the social security system, since they did not subscribe to it, they did enjoy the measures of protection relating, for example, to accidents at work and occupational illness, which were provided for by a specific law.

The meeting rose at 6 p.m.